

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4734 of 1999

with

SPECIAL CIVIL APPLICATION No 6346 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

THAKKAR DHARATIBEN HARIBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4734 of 1999
MR V.J. Desai, with Mr. P.J. Patel, Ld. advocates
for Petitioners
Mrs. Manisha Lavkumar, Ld. GOVT PLEADER for Resp. No. 1
MR BY MANKAD for Respondent No. 2
 2. Special Civil Application No 6346 of 1999
MR BS SUPEHIA for Petitioners
Mrs. Manisha Lavkumar, Ld. Govt. Pleader for Resp. No. 1
Mr. BY Mankad, Ld. advocate for Respondent No. 2
Mr. K.G. Pandit, Ld. advocate for Respondent No. 3
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CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 14/12/1999

CAV JUDGEMENT

1. In these two petitions under Article 226 of the Constitution, petitioners who have applied for admission to the First Year Homeopathy course under the Centralised Admission System in the Homeopathy Colleges all over the State, have challenged;

(a) the policy decision taken by the State Government vide Resolution dated 16-6-1999 with regard to the First Year Admission for the degree course in Homeopathy Medicines laying down the eligibility criteria for the aforementioned admission as being 50 % marks in 12th standard (Science stream).

(b) The additional requirement of passing Higher Secondary Examination (Science stream) with mathematics as one of the subjects with condition of 50% marks in Physics, Chemistry and Biology;

(c) Petitioner of Spl.C.A. No. 6346/99 belongs to Baxi Panch and hence relaxation in the qualification must be granted to the petitioner;

2. Before highlighting the nature of the controversy posed for determination in this Spl.C.As few but relevant facts / narrations as per the averments made in the Spl.C.A. No. 4734 of 1999 require consideration.

2.1 The petitioners are the students who have recently passed 12th Standard examination (science stream) with percentage of marks varying from 44.66 % to 38.44 %. They have applied for the admission to the first year degree course in Homeopathy Medicine in different colleges in the State. Previously the admission criteria for Homeopathy medicine was 35% marks in 12th standard with Maths, Physics, Biology and Chemistry. Government has issued public advertisement in the daily newspaper Sandesh on 1-7-1999 wherein for the first time it is made known to the 12th standard students that the admission will be given in the first year degree course in Homeopathy Medicine for the year 1999-2000 to those who had achieved minimum 50 % marks in Maths, Physics, Biology and Chemistry. Earlier, that is, in year 1990, Government had fixed 50 % marks as minimum standard for admission in first year degree of Homeopathy Medicine (B H M S) but due to non-filling of all seats it was reduced to 45 % by Govt. As per Resolution dated 3-7-1996 it was further reduced to 40 % and thereafter it

was reduced to 35 % marks by G.R. dated 7-1-1998 since there were vacant seats in the BHMS colleges. It is averred in the petition that Central Council Homeopathic Act, 1973 and the Regulations of 1983 also provide for first year degree course as passing 12th standard examination with aforesaid subjects.

3. Being aggrieved by the aforesaid decision of the Government, petitioners have filed these petitions to issue appropriate writ, order or directions in the nature of mandamus directing the respondents to grant admission to the 12th standard Science Stream passed students having Physics, Chemistry, Biology and Maths as their subjects according to the merits of marks obtained by the concerned student applying for admission to the first year degree course in Centralised Admission System and set aside the decision of the Government of restricting the admission of the students in 1st year degree course who have obtained minimum 50 % marks by declaring the same as illegal, arbitrary and violative of Article 14 of the Constitution.

4. Pursuant to the notice issued by this Court, respondent No.1 State Government contested the petitions by filing affidavit in reply on the following premises;

(a) This policy decision of the Government which has been taken after due consideration that the students with less percentage of marks, if given admission, would not be able to study properly and would not be able to understand subjects properly, normally should not be disturbed;

b) The policy decision is taken in consonance with the norms laid down by Central Council of Homeopathy Act, 1973 and the Regulation, 1983;

5. Respondent no.3 Central Council of Homeopathy has also filed affidavit in reply whereby it is categorically stated that the eligibility criteria fixed by the State authority for B H M S is not inconsistent or contrary to Homeopathy (Degree Course) Regulation 1983 and also does not contravene any regulations framed by the Central Council, then the Central Council has no objections to the same.

6. It may be noted that these two petitions came up for admission hearing before Mr. Justice M.S. Shah, who vide order dated 20-9-99 negatived the second challenge in the following terms:-

" It cannot, however be overlooked that in most other States the students are required to opt either for Biology or for Mathematics in the 11th standard of science stream. Those who want to do go for medical or paramedical courses are required to opt for Biology and those who want to go for engineering courses are required to opt for Mathematics. In the State of Gujarat, for 11th as well as 12th standard Higher Secondary Science Stream Examination, the students are required to pass the examination in Physics, Chemistry, Biology and also in Mathematics. This keeps the student's options for all the courses and it is for this reason that for giving admissions to medical courses as well as for engineering courses, the marks in all three science subjects and Mathematics are taken into account and interviews for admissions to medical/paramedical courses and for engineering courses are held simultaneously. Such a system also enables the students to assess and ascertain their chances of getting admission to different courses at the same place and time so that no seats are wasted on account of any shifting or reshuffling which would take place if admissions were to be given to students in medical/paramedical courses on the one hand and in engineering courses on the other hand separately and on the basis of different criteria. Hence, no fault can be found with the system in vogue in the State of Gujarat. "

7. However he has further observed that:-

" Since the main challenge in the petitions against prescription of 50% marks is not entertained on the ground that in any event the petitioners are not likely to get admissions even on merits. It is clarified that in case all the 525 seats are not filled in, it would be open to the petitioners to pray for revival of these petitions by filing Misc. Civil Applications. In case any seats remain vacant as aforesaid, the same shall not be filled in and this information shall be displayed on the notice board of Homeopathy colleges as well as on the notice board of the Centralised Admission Committee for admissions to the Homeopathy colleges in the State. "

8. Since 96 seats remain vacant and in view of the aforesaid liberty to revive the petitions, the petitioners of both the petitions have sought for revival of original petitions by filing Misc. Civil Application No.2229/99 in Spl.C.A. No. 4734 of 1999 and Misc. C.A. No. 2154/99 in Spl.C.A. No. 6346/99 and Mr. Justice M.S. Shah by order dated 27-8-1999 revived both the petitions and that is how both the petitions are placed before this Court for admission hearing, wherein the challenge that now remains for consideration of this Court is pertaining to eligibility criteria of 50% of marks in addition to the qualification laid down by the Central Council of Homeopathy.

9. Ld. advocate Mr. V.J. Desai for the petitioners and Ld. AGP Mrs. Manisha Lavkumar for respondent State of Gujarat have made their elaborate submissions. The pith and substance of their submissions centres round the validity of the policy decision taken by the State Government vide Resolution dated 16-6-1999, with regard to laying down the eligibility criteria as minimum 50 % in 12th standard.

10. Ld. counsel Mr. V.J. Desai assailed the aforesaid Resolution mainly on the ground that since the Central Council of Homeopathy which is the expert body in the field of Homeopathic Medical Science has not laid down any eligibility criteria, it is not open for the State Government to lay down minimum criteria of 50% marks in 12th standard. In the past also the Government has relaxed said criteria and reduced upto 35 % marks only vide the Resolution dated 7-1-1998 since all the seats were not filled in and this year also 96 seats are vacant. Therefore there is no justification for the Government to stick to the said resolution which is neither in the interest of the State nor the students and public at large. In view of this, the said resolution is violative of Article 14 of the Constitution of India which is liable to be quashed and set aside, declaring the same as illegal, arbitrary and unjust.

11. In support of the aforesaid contentions he placed reliance on the decision of Hon'ble Supreme Court in case of STATE OF TAMIL NADU AND ANOTHER VS. ADHIYAMAN EDUCATIONAL & RESEARCH INSTITUTE AND OTHERS, (1995) 4 SCC, PG. 104, wherein Hon'ble Supreme Court has held as under:-

" (v) When there are more applicants than the available situations/seats, the State authority is not prevented from laying down higher

standards or qualifications than those laid down by the Centre or the Central authority to short-list the applicants. When the State authority does so, it does not encroach upon Entry 66 of the Union List or make a law which is repugnant to the Central law.

- (vi) However, when the situations/seats are available and the State authorities deny an applicant the same on the ground that the applicant is not qualified according to its standards or qualifications, as the case may be, although the applicant satisfies the standards or qualifications laid down by the Central law, they act unconstitutionally. So also when the State authorities de-recognise or disaffiliate an institution for not satisfying the standards or requirement laid down by them, although it satisfied the norms and requirements laid down by the Central authority, the State authorities act illegally. "

12. Relying upon the unreported decision of the Bombay High Court in case of CHETAN VILAS GUJARATI VS STATE OF MAHARASHTRA & ORS, in Writ Petition No. 4473 of 1998, it was contended that identical question arose before the Bombay High Court wherein the similar challenge was made and the Bombay High Court placing reliance upon the judgment of the Hon'ble Supreme Court in case of State of Tamil Nadu (supra) has allowed the writ petition filed by the student by issuing appropriate directions to State of Maharashtra and quashed & set aside the eligibility criteria of 50 % marks in Physics, Chemistry & Biology .

13. It was then contented that in view of the ratio laid down by the Hon'ble Apex Court in the aforesaid decision which has become the law of the land and followed by the Bombay High Court and in view of the peculiar facts & circumstances of this case, that is, 96 seats are lying vacant, it is now not open for the State Government to deny admission to the students only on the ground that they have not obtained 50% marks as per the resolution dated 16-6-1999, which is unconstitutional and violative of Article 14 of the Constitution. On the aforesaid premises Ld. advocate for the petitioners urges that present petitions may be allowed by quashing and setting aside the impugned resolution in the larger interest of the Students, State and the public at large.

14. On the other hand, the aforesaid contentions are

strenuously countered by Ld. AGP Mrs. Manisha Lavkumar on behalf of the State Government and defended the policy of the State Government by contending that the decision taken by the government is rational and in the interest of society at large and if it is not in contravention of the Act and the Rules framed by the Central Council of Homeopathy it cannot be interfered with by this Court in exercise of power under Article 226 of the Constitution. Ld. AGP has further contended that if this Court at this stage interferes with the policy decision taken by the State Government it will create chaotic situation for admission to the Homeopathy colleges, as the admissions have already completed and the curriculum for the term has commenced.

15. Ld. AGP further contended that, it is true that in past the eligibility criteria have been reduced to 35% but the said fact by itself is not a ground to strike down the eligibility criteria of 50% marks laid down for the year 1999-2000 by virtue of the policy decision. Looking to the past experience, according to her, a candidate who secures less than 50% of marks finds it difficult to study in Homeopathic colleges since the medium of instructions in the colleges is English and if the student with less merit get the admission they would not be able to understand the subject properly and after getting their degree in BHMS will start treating the patients haphazardly and they will play with the precious life of the patient. Therefore to maintain high degree of medical education State has taken the decision in the welfare of the society at large which cannot be interfered with by this Court in exercise of powers under Article 226 of the Constitution.

16. I have given my anxious thought and consideration to the rival contentions of both the sides and the decisions cited by both the sides. Before answering the question posed for my decision, it may be appreciated that the Central Council has been constituted by the Government of India under the provisions of Homeopathy Central Council Act, 1973 for regulating matters connected therewith. The Central Council is vested with the powers u/s 20 of the Central Act. As prescribed, the following criteria for admission in the Homeopathy Degree course is required for granting recognised medical qualification by Universities. The minimum qualification for the B H M S Degree course of 5 - 1/2 years education has been laid down as under:

" Admission to Course:

Regulation:

Minimum Qualification: No candidate shall be admitted to the B H M S Degree course unless he has:-

- (a) passed intermediate Science or its equivalent examination with Physics, Chemistry and Biology as his subjects;
- (b) attained the age of 17 years on or before 31st December of the year of his admission to the first year of the Course. "

17. Now so far as the judgment in case of State of Tamil Nadu (supra) relied upon by the petitioner is concerned it is distinguishable on the facts of the said case as observed in the said judgment, which reads as under.

" Tamil Nadu Private College (Regulation) Act is made applicable to the technical institutions, it will overlap and will be in conflict with the provisions of the Central Act in various areas and, in particular, in the matter of allocation and disbursement of grants, formulation of schemes for initial and in-service training of teachers and continuing education of teachers, laying down norms and qualifications, quality instruction assessment and examinations, fixing norms and guidelines for charging tuition and other fees, granting approval for starting new technical institutions, withholding or discontinuing grants in respect of courses and taking such other steps as may be necessary for ensuring compliance of the directions of the Council, declaring technical institutions at various levels and types fit to receive grants, the constitution of the Council and its Executive Committee and the Regional Committees to carry out the functions under the Central Act, the compliance by the Council of the directions issued by the Central Government or questions of policy etc. which matters are covered by the Central Act. This being so, the Hon'ble Supreme Court has struck down the provisions of the State Act which impinge upon the provisions of the Central Act as the same was void and unenforceable. "

18. So far as the present case is concerned, there is no overlapping of legislation of the Central Act with the State Resolution. In fact, a categorical approval has been given by the Central Council to the additional

qualification laid down by the State Government and has held that the same is not in contravention of its rule no.4.

19. Reliance is placed on behalf of the State Government in the recent decision of the Constitutional Bench of the Hon'ble Supreme Court in case of Dr. PREETI SRIVASTAVA AND ANOTHER VS. STATE OF M.P. AND OTHERS, (1999) 7 Supreme Court Cases, 120 . The Constitutional Bench in term held that once the minimum standards are laid down, States are competent to prescribe any further qualifications for selecting better students as they would not adversely affect the standards so laid down. Further, the terms 'qualification' and 'eligibility' have been distinguished by the said judgment. In the aforementioned judgment, the Constitutional Bench has held as under:

".... Admission must be made on a basis which is consistent with the standards laid down by a statute or regulation framed by the Central Government in the exercise of its powers under Entry 66 List I. At times, in some of the judgments, the words 'eligibility' and 'qualification' have been used interchangeably, and in some cases a distinction has been made between the two words - 'eligibility' connoting the minimum criteria for selection that may be laid down by the University Act or any Central statute, while 'qualifications' connoting the additional norms laid down by the colleges or by the State. In every case the minimum standards as laid down by the Central statute or under it, have to be complied with by the State while making admissions. It may, in addition, lay down other additional norms for admission or regulate admissions in the exercise of its powers under Entry 25 List III in a manner not inconsistent with or in a manner which does not dilute the criteria so laid down. Thus once the minimum standards are laid down by the authority having the power to do so, any further qualifications laid down by the State which will lead to the selection of better students cannot be challenged on the ground that it is contrary to what has been laid down by the authority concerned. But the action of the State is valid because it does not adversely impinge on the standards prescribed by the appropriate authority."

20. It was further held in the said decision as

under:-

" It would not be correct to say that the norms for admission have no connection with the standards of education, or that the rules for admission are covered only by Entry 25 of List III. Norms of admission can have a direct impact on the standards of education. Of course, there can be rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List I. For example, a State may, for admission to the postgraduate medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List I. For example, a State may, for admission to the postgraduate medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List I. This would be consistent with promoting higher standards for admission to the higher educational courses. But any lowering of the norms laid down can and does have an adverse effect on the standards of education in the institutes of higher education. Standards of education in an institution or college depend on various factors. "

21. It is true that earlier, State of Gujarat had prescribed minimum marks of 50 % in 12th standard for admission to the Homeopathy colleges. However in past they have reduced said criteria for filling up vacancies and same was reduced to 35 % marks vide G.R. dated 7-8-1998. According to me, this cannot be a ground to reduce said criteria for year 1999-2000 on the ground that 96 seats are still to be filled in, and no such direction can be given by exercising power under Article 226 of the Constitution. Since it was observed by the State Government that by lowering qualifying standard of admission, students passing out the BHMS course were far below the required norms and as the study of this course entails study of medicines in the English language, it was rightly felt that the minimum admissibility qualification should be maintained at 50 % marks.

22. It may also be appreciated that there are minimum admission standards prescribed for Medical faculty as 55% The Ayurved faculty has prescribed qualifying standard as 55% marks. Considering the importance of this faculty as compared to other medicine related faculties, a policy decision was taken to keep the admission criteria at 50% marks and by no stretch of imagination can it be said

that said criteria is arbitrary or unjust, since the said decision has been taken in the larger interest of students and public at large whose life would be seriously affected by quality of pass outs of this degree course. It cannot be ignored that the Government is a Welfare State and in no way it can show indifference to public at large and in order to maintain a certain standard of efficiency and merit in the pass outs of this degree course, the criteria has been laid down as 50% marks. It may also be noted that the Central Council in its affidavit dated 7th September 1999 has stated that if the State authorities or any other competent authority of the State have fixed a particular percentage of mark or some other additional qualification for such admission without defaulting or contravening the provisions of regulation 4 (supra) then the Central Council has no objection to this.

23. In respect of the contention of the petitioners that since there are 96 vacant seats to be filled up, the eligibility criteria should be reduced and admission should be given to students scoring marks below 50% till the entire quota of seats are not filled up, I am of the opinion that said contention is not well founded because it would open a flood gate of litigation every year and the State would have to reduce the eligibility criteria every year pro-rata on the basis of vacancies available. The policy decision to prescribe 50% marks is taken well in advance as the admission is centralised and wide publicity is given to the said requirement in as many as 8 daily newspapers of the State. It would be highly discriminatory to grant admission to the petitioners while denying admission to the students who may not have filled up the forms under the Central Admission System considering eligibility criteria of 50 % marks. Merely on account of the fact that the present petitioners have approached this Court, they cannot be placed on a better footing than those students who have not applied under the Centralised Admission System on account of not securing 50% or more marks at the 12th standard.

24. Furthermore, it was rightly observed by the State Government in their affidavit in reply dated 17th July 1999 that, " by reducing the admission percentage periodically, the efficiency has been affected adversely, because Homeopathy course covers all medical subjects in English. It is also stated that the passing standard of B.H.M.S. degree course is 50% . It is also observed by the Government that by reducing the percentage the number of self financed colleges have been increased and the admission seats are also increased and, therefore, the

seats remains vacant. From the academic year 1998-99 all Homeopathic Colleges in the State have covered under centralised admission. The matter is closely related with the life of human beings and hence percentage of admission should be at par with the other medical faculties like Allopathy and Ayurvedic Medicines. This increase in the percentage does not affect any scholar students. Looking to the above facts and considering all aspects carefully, the Government have increased the admission standard of 50 % from this year ".

25. It is the settled proposition of law that High Court cannot in exercise of its jurisdiction under Article 226 devise a scheme regulating the policy decision taken by the statutory authority. In a matter relating to the internal working of the educational institutions and in academic matters Courts will not interfere unless that act complained of is clearly beyond the jurisdiction or contrary to the statutory rules or the regulations governing institutions or the constitution, or there is statutory duty which authority has failed to perform or impugned act is mala fide or in violation of natural justice.

26. It is also settled proposition of law that, change in the policy by State does not vitiate the action taken pursuant thereto if the policy is rational and reasonable. I am fortified in my view by the judgment in case of UNION OF INDIA AND OTHERS VS. HINDUSTAN DEVELOPMENT CORPORATION AND OTHERS, (1993) 3 SCC, 499.

27. It is also a settled proposition of law that a government policy in absence of being unreasonable or against public interest is not subject to judicial review. My aforesaid view is fortified by the judgment of Hon'ble Apex Court in case of STATE OF U.P. VS. U.P. UNIVERSITY COLLEGES PENSIONER'S ASSOCIATION, AIR 1994 S.C. PG. 2311.

28. It is also the settled proposition of law that right of State to change its policy from time to time under changing circumstances cannot be challenged. The aforesaid view is found support from the judgment of the Apex Court in case of STATE OF PUNJAB VS. RAM LUBHAYA BAGGA, A.I.R. 1998, S.C. 1703.

29. In view of the observations made herein above and the principles enunciated by the Hon'ble Supreme Court in case of Preeti Srivastava (supra), the principle enunciated by Hon'ble Apex Court in case of State of

Tamil Nadu (supra) which is distinguishable on the facts and circumstances of the case, can not come to the rescue of the petitioners . Since the Government is empowered to frame the policies and also change the policies from time to time by passing appropriate resolutions in the interest of justice and public at large and also rational and reasonable, it cannot be termed to be arbitrary, unjust or unreasonable, illegal and in violation of Article 14 of the Constitution. Therefore the contention advanced by the petitioners cannot be given any countenance.

30. So far as petitioner in petition No. 6346 of 1999 is concerned, he also claims admission on the ground that he belongs to Baxi Panch and therefore some relaxation in the qualification must be granted to the petitioner. In this regard it is to be noted that the eligibility criteria for the reserved category is 40 % as per the said G.R, and in view of the discussions made hereinabove the said criteria also cannot be reduced by granting relaxation in qualification.

31. In the net result, the aforesaid discussions would go to show that the challenge to the impugned decision of the Government must fail and accordingly it is failed. In the premises both the petitions being devoid of any merits are liable to be dismissed and accordingly they are dismissed, with no order as to costs. Rule issued in both the petitions stand discharged.

/vgn.